

APPEAL NO. 041788
FILED AUGUST 30, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 18, 2004. The hearing officer determined that the appellant (claimant herein) was not entitled to supplemental income benefits for the ninth quarter. The claimant files a request for review and the respondent (carrier herein) replies.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Commission records indicate that the hearing officer's decision was mailed to the claimant on June 25, 2004. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case deemed receipt is June 30, 2004. Thus, the appeal needed to be mailed no later than July 21, 2004, the 15th day from the deemed date of receipt. The Commission received the claimant's appeal by facsimile transmission on July 22, 2004. Thus, the appeal is untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision is final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge